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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 COREY ROBERTSON,
12 Petitioner,
13 v.
14 PATRICK COVELLO,
15 Respondent.
16
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No. 2:24-cv-02541-DAD-DMC (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING THE
PENDING PETITION WITHOUT
PREJUDICE AND DENYING
PETITIONER’S MOTION FOR STAY AND
ABEYANCE AS MOOT

(Doc. Nos. 1, 2, 7)

18 Petitioner, a state prisoner proceeding *pro se*, brings this petition for a writ of habeas
19 corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge
20 pursuant to Eastern District of California local rules.

21 On December 12, 2024, the assigned magistrate judge issued findings and
22 recommendations recommending that the pending petition be dismissed due to petitioner’s failure
23 to prosecute, as well as his failure to comply with court orders, and that his motion for stay and
24 abeyance of the petition (Doc. No. 2) therefore be dismissed as moot. (Doc. No. 7.)

25 The pending findings and recommendations were served on petitioner at his address of
26 record and contained notice that any objections thereto were to be filed within fourteen (14) days
27 after service. (*Id.* at 2.) To date, no objections to the findings and recommendations have been
28 filed, and the time in which to do so has long since passed. Indeed, petitioner has not

1 communicated with the court in any way since filing his petition and motion for stay on
2 September 19, 2024.

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
4 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
5 findings and recommendations are supported by the record and by proper analysis.

6 In addition, having concluded that the pending petition must be dismissed, the court also
7 declines to issue a certificate of appealability. A petitioner seeking writ of habeas corpus has no
8 absolute right to appeal; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253;
9 *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). If a court denies a petitioner's petition, the
10 court may only issue a certificate of appealability when a petitioner makes a substantial showing
11 of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Where, as here, the court denies
12 habeas relief on procedural grounds without reaching the underlying constitutional claims, the
13 court should issue a certificate of appealability "if jurists of reason would find it debatable
14 whether the petition states a valid claim of the denial of a constitutional right and that jurists of
15 reason would find it debatable whether the district court was correct in its procedural ruling."
16 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In the present case, the court finds that reasonable
17 jurists would not find the court's determination that the pending petition must be dismissed to be
18 debatable or wrong. Thus, the court declines to issue a certificate of appealability.

19 Accordingly:

- 20 1. The findings and recommendations issued December 12, 2024 (Doc. No. 7), are
21 ADOPTED in full;
- 22 2. The petition is DISMISSED without prejudice due to petitioner's lack of
23 prosecution and failure to comply with court rules and orders;
- 24 3. Petitioner's motion for a stay and abeyance (Doc. No. 2), is DENIED as moot;

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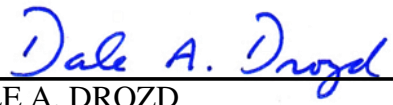
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1 4. The Court DECLINES to issue a certificate of appealability; and

2 5. The Clerk of the Court is directed to close this case.

3 IT IS SO ORDERED.

4 Dated: March 6, 2025



DALE A. DROZD
UNITED STATES DISTRICT JUDGE